

STATE OF MICHIGAN
COURT OF APPEALS

ERNEST MADDOCK,

Plaintiff-Appellant,

v

H. FRED CAMPBELL, H.F. CAMPBELL
COMPANY and CAMBPELL DEVELOPMENT
COMPANY,

Defendants-Appellees.

UNPUBLISHED

January 29, 1999

No. 202657

Oakland Circuit Court

LC No. 96-511999 CK

Before: Doctoroff, P.J., and Sawyer and Fitzgerald, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court order granting summary disposition of plaintiff's complaint to vacate an arbitration award and staying plaintiff's second demand for arbitration. We affirm.

In April 1994, plaintiff filed suit against defendants alleging that, pursuant to an employment contract with defendants, defendants owe him business expenses, health care expenses, vacation pay, and unpaid commission from a condemnation proceeding between Wayne County and defendants. The trial court summarily dismissed some of plaintiff's claims, and the parties stipulated to dismissal of the remaining claims on the ground that the claims were subject to arbitration pursuant to the employment agreement. Plaintiff submitted his claims for business expenses, health care expenses, and vacation pay to arbitration, and defendants submitted cross-claims. An arbitration decision was rendered on December 26, 1995, denying both plaintiff's and defendants' claims. Plaintiff moved to vacate the award, claiming clear legal and factual error by the arbitrator. Plaintiff also submitted a second demand for arbitration dated June 17, 1996, with regard to the claim for unpaid commission. The trial court summarily dismissed plaintiff's complaint and stayed arbitration of the claim for commission.

We find no error on the face of the arbitration award entered in this case, which merely stated that "[t]he claims and counterclaims submitted by both parties is hereby denied." See *DAIIE v Gavin*, 416 Mich 407, 443; 331 NW2d 418 (1982). The arbitrator did not state any reasons for his decision

and it is thus “virtually impossible to discern the mental path leading to” the award. *Henderson v DAIIE*, 142 Mich App 203, 206; 369 NW2d 210 (1985). Therefore, since no basis exists for assuming the arbitrator exceeded his powers, judicial review of the arbitration award is precluded. *Id.* Accordingly, the trial court did not err by summarily dismissing plaintiff’s complaint.

With regard to the second arbitration demand, the trial court granted the stay based on the collateral estoppel effect of the first arbitration proceeding and based on the January 25, 1995, “order of dismissal in favor of arbitration,” which the court interpreted to require plaintiff to submit all claims to arbitration at the same time. We need not determine the propriety of the trial court’s ruling as plaintiff waived the claim regarding unpaid commissions by failing to demand arbitration of this claim “within 90 days of the occurrence giving rise to the dispute or claim” as required by the express terms of plaintiff’s employment agreement.¹ Thus, we affirm the trial court’s stay of plaintiff’s second demand for arbitration, albeit on different grounds.

Affirmed.

/s/ Martin M. Doctoroff
/s/ David H. Sawyer
/s/ E. Thomas Fitzgerald

¹ Plaintiff argues that the claim for commission was not ripe at the time of the first arbitration proceeding because the additional amount, if any, that Wayne County was going to pay for the property that was the subject of the condemnation proceeding was unknown. However, a cause of action accrues when all the elements of the claim have occurred and can be alleged in a proper complaint. *Davidson v Bugbee*, 227 Mich App 264, 269; 575 NW2d 574 (1997). Although the precise amount of any commission was unknown at the time of the first arbitration proceeding, the formula for determining the amount of the commission was included in the employment agreement. Thus, if the arbitrator found that plaintiff was in fact entitled to commission on any additional amount received as a result of the condemnation proceeding, the arbitrator could have included in the arbitration award the percentage plaintiff was to receive.